

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioner has a grievance against the Department of PATH in that PATH has reduced reimbursements paid to the petitioner. PATH has taken this action because it believes that the petitioner was billing for procedures not actually undertaken. The petitioner vigorously denies this claim and has provided evidence to PATH which it says refutes PATH's allegations.

3. The petitioner seeks reimbursement from PATH in an amount that is at present in excess of \$300,000 for testing it has performed on Vermont Medicaid recipients.

ORDER

PATH's motion to dismiss this matter for lack of jurisdiction is granted.

REASONS

The jurisdiction of the Human Services Board is established by statute found at 3 V.S.A. § 3091:

- (a) An applicant for or a recipient of assistance, benefits or social services from the department of social and rehabilitation services, the department of social welfare, the office of economic opportunity, department of aging and disabilities, the office of child support, or an applicant for a license from one of those departments or offices, or a licensee, may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits, or services, or license or license application; or because the individual is aggrieved by agency policy as it affects his or her situation.

The above regulation confers standing to come before the Human Services Board on those persons who are or would be recipients of assistance, benefits or services of the listed

departments¹ or to those who are or would be licensees of the same departments.

The petitioner argues, relying on a definition of "license" found in Black's Law Dictionary, that PATH's relationship with it should be characterized as that of a licensor and licensee because PATH has granted it a permit to carry on a business subject to the state police power. There was no evidence presented in this matter, however, that would indicate that the petitioner needs a permit from PATH to operate its business in this state or that PATH has any authority to grant such a permit or to regulate its activity in any way. The evidence indicates only that PATH has approved the petitioner to provide certain services at a certain cost to its Medicaid program beneficiaries. PATH's regulation labels entities such as the petitioner as "providers" whose relationship is more in the nature of a contractual than a regulatory one. See M155.1. It cannot be found that the petitioner meets the definition of licensee found in Black's dictionary or intended in 3 V.S.A. § 3091(a).

Regulations adopted by PATH have instituted a separate process for hearings for PATH providers which is found at M154

¹ PATH is the successor the department of social welfare listed in the statute.

et seq. Those procedures provide for a hearing before the Secretary of the Agency of Human Services using the same rules as hearings before the Human Services Board. See M155.6. The relief available to a provider before an action is taken is restricted under these regulations if there is a claim of fraud. See M155.2 and 155.7. However, that restriction does not create a second administrative avenue of relief for a provider if it is not satisfied with the process afforded it before the designated forum.

The petitioner argues in the alternative that it should be allowed to proceed as the representative of persons who may be denied diagnostic services because of PATH's actions with regard to the petitioner. The petitioner points to a federal court decision in which Medicaid providers were allowed to represent Medicaid recipients who were deemed to be unable to assert their own interests. Clayworth v. Bonta, Civ-S-03-2110 (E.D. Cal. Dec. 23, 2003). That case involved a federal challenge to a state's rate cuts in its Medicaid program brought by providers pursuant to a federal statute at 42 U.S.C. § 1983. The federal district court determined that beneficiaries had standing and a cause of action under that federal statute to challenge across the board rate cuts in a federal court and that the providers had "third party

standing" to represent beneficiaries unable to represent themselves.

Unlike the federal statute in Clayworth the state statute at 3 V.S.A. § 3091(a) does not give Medicaid recipients standing to challenge rates paid by PATH to its providers. 3 V.S.A. § 3091(a) makes it clear that the right granted is one to challenge decisions regarding "assistance, benefits and social services" due to recipients. Even if a provider could represent the interests of a recipient before the Board, it cannot bring the kind of claim that a recipient herself could not bring.

If a recipient was actually denied a benefit because of the action taken by PATH with regard to its rate cutting or refusal to pay a contractee, there is no doubt that the Board could hear that appeal. The beneficiary could be represented by anyone he or she chose in such an appeal, including the petitioner. See Fair Hearing Rule 2. However, in this matter, no recipient who claims denial of a benefit has filed an appeal.

Even if the petitioner could marshal a recipient to join in its appeal and the evidence needed to prove the above points, the relief which the Board could offer would be only with regard to that individual recipient. The Board has no

authority to offer classwide relief. See Swan v. Stoneman 635 F.2d 92 (2d Cir. 1980). The best the Board could do if the petitioner prevailed in an appeal would be to order payment for future diagnostic tests to that individual. Under 3 V.S.A. § 3091(d), the Board could not order retroactive payments for tests already performed since the benefit already accrued to the recipient. Nor could it order PATH to employ any particular provider for provision of future benefits.

It must be concluded that the petitioner as a Medicaid provider has no standing to come before the Board and the Board has no subject matter jurisdiction over contractual claims it has for payment from the Department of PATH. PATH's request to dismiss this matter is granted.

#